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11 *Attorneys for Defendant*  
12 *Walmart Inc.*

13 UNITED STATES DISTRICT COURT  
14 DISTRICT OF NEVADA

15 BARBARA SIMONE, an individual,  
16  
17 Plaintiff,  
18  
19 v.

Case No.: 2:18-cv-01365-JAD-VCF

20 WALMART INC. d/b/a “Walmart”, a foreign  
21 corporation; DOES 1 through 10 inclusive; and  
22 XYZ CORPORATIONS 11 through 20  
23 inclusive and ABC LIMITED LIABILITY  
24 COMPANIES 21 through 30, inclusive,  
25  
26 Defendants.

**STIPULATION AND ORDER FOR**  
**DEFENDANT WALMART TO TAKE**  
**LEAVE TO FILE A THIRD PARTY**  
**COMPLAINT**

27 Plaintiff Barbara Simone (hereinafter “Plaintiff”) and Defendant WALMART, INC.  
28 (hereinafter “Walmart” or “Defendant”), by and through their respective counsel of record, do hereby  
stipulate for Defendant to file a Third Party Complaint against Gatekeeper Systems, Inc. The filing of  
this Third Party Complaint is proper as through discovery it has been revealed that Gatekeeper  
Systems, Inc. has contacted with Walmart, Inc. with regard to shopping cart supply, maintenance and  
repair on the premises and as such Gatekeeper Systems must be added as a party to the matter as it is  
statutorily and equitably obligated to assume indemnification and contribution of Defendant Walmart  
pursuant to a master services agreement.

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1 The parties aver that this stipulation is made by the parties in good faith pursuant to FRCP 14  
2 and not for the purpose of delay. A copy of the proposed Third Party Complaint is attached as Exhibit  
3 "A" for the Court's review.

4 DATED this 12<sup>th</sup> day of June, 2019.

5  
6 /s/ John Greene

7 JOHN GREENE  
8 Nevada Bar No. 4279  
9 VANNAH & VANNAH  
400 South Seventh Street, 4<sup>th</sup> Floor  
Las Vegas, NV 89101

10 *Attorneys for Plaintiff*  
11 *Barbara Simone*

/s/ Betsy Jefferis

BETSY JEFFERIS  
Nevada Bar. No. 12980  
PHILLIPS, SPALLAS & ANGSTADT, LLC  
504 South Ninth Street  
Las Vegas, Nevada 89101

*Attorneys for Defendant*  
*Walmart Inc.*

12  
13 **IT IS SO ORDERED:**

14   
**UNITED STATES MAGISTRATE JUDGE**

15 **DATED:** 6-14-2019

16 Defendant must file the Third Party Complaint on or before  
17 June 21, 2019.  
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# **EXHIBIT A**

Draft of Third-Party Complaint

# **EXHIBIT A**

Draft of Third-Party Complaint

1 ROBERT K. PHILLIPS  
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7 *Attorneys for Defendant*  
8 *Walmart Inc.*

9 UNITED STATES DISTRICT COURT  
10 DISTRICT OF NEVADA  
11

12 BARBARA SIMONE, an individual,

13 Plaintiff,

14 v.

15 WALMART INC., d/b/a “Walmart”, a foreign  
corporation; DOES 1 through 10 inclusive; and  
16 XYZ CORPORATIONS 11 through 20  
inclusive and ABC LIMITED COMPONAIES  
17 21 through 30, inclusive,

18 Defendants.

Case No: 2:18-cv-01365-JAD-VCF

**DEFENDANT WALMART INC.’S THIRD**  
**PARTY COMPLAINT AGAINST**  
**GATEKEEPER SYSTEMS INC.**

19  
20 COMES NOW, Defendant/Third Party Plaintiff WALMART, INC., by and through its  
21 attorneys of record, the law firm PHILLIPS, SPALLAS & ANGSTADT, LLC, and hereby submits its  
22 Third Party Complaint against GATEKEEPER SYSTEMS, INC., as follows:

23 **GENERAL ALLEGATIONS**

24 1. That at all times relevant herein, Defendant/Third Party Plaintiff Walmart, Inc. was a  
25 Delaware corporation licensed to conduct business in the State of Nevada.

26 2. That at all times relevant herein, Defendant/Third Party Plaintiff Walmart, Inc.  
27 controlled, maintained and operated the premises commonly known as Walmart Store # 3350 located  
28

1 at 5198 Boulder Highway, Las Vegas, NV 89122.

2 3. That at all time relevant herein, Third Party Defendant Gatekeeper Systems, Inc. is a  
3 California corporation licensed to conduct business in the State of Nevada.

4 4. Upon information and belief, that at all times relevant hereto, Third Party Defendant  
5 Gatekeeper Systems, Inc. maintained and serviced the shopping carts(s) located on the property of  
6 Walmart Store # 3350 located at 5198 Boulder Highway, Las Vegas, NV 89122.

7 5. That at all times relevant hereto, Third Party Defendant Gatekeeper Systems, Inc.  
8 supplied Walmart Store # 3350 located at 5198 Boulder Highway, Las Vegas, NV 89122, with  
9 shopping carts to be used by Walmart's customers.  
10

11 **FIRST CLAIM FOR RELIEF**  
12 **(NEGLIGENCE)**

13 6. Defendant/Third Party Plaintiff Walmart, Inc. incorporates by reference Paragraphs 1  
14 through 5 above as if fully set forth herein.

15 7. That Third Party Defendant Gatekeeper Systems, Inc. owed a duty to Walmart, Inc. to  
16 maintain its equipment in a safe condition, including a duty to properly monitor the safety of its  
17 product available for use at Defendant/Third Party Plaintiff's premises.

18 8. That at all times relevant, Third Party Defendant Gatekeeper Systems, Inc. owed a duty  
19 to provide Defendant/Third Party Plaintiff Walmart, Inc. with adequate maintenance, repair, and  
20 monitoring of the product(s) supplied to Walmart Store # 3350 located at 5198 Boulder Highway, Las  
21 Vegas, NV 89122.  
22

23 9. That Third Party Defendant Gatekeeper Systems, Inc. negligently failed to properly  
24 service and maintain the product(s) it supplied to Walmart Store # 3350 resulting in a dangerous and  
25 hazardous condition in, and around, the equipment also supplied and maintained by Third Party  
26 Defendant Gatekeeper Systems, Inc.  
27

28 10. That, as the direct result of the negligence of Third Party Defendant Gatekeeper

1 Systems, Inc., resulting in Plaintiff's allegations of injury, Defendant/Third Party Plaintiff Walmart,  
2 Inc. has been forced to retain the services of an attorney and incur the costs associated with defense of  
3 this suit.

4  
5 **SECOND CLAIM FOR RELIEF**  
**(CONTRACTUAL INDEMNITY)**

6 11. Defendant/Third Party Plaintiff Walmart, Inc. incorporates by reference Paragraphs 1  
7 through 10 above as if fully set forth herein.

8 12. That Defendant/Third Party Plaintiff Walmart, Inc. did not owe a duty to Plaintiff to  
9 maintain or service the shopping carts(s) located at Walmart Store # 3350 located at 5198 Boulder  
10 Highway, Las Vegas, NV 89122 on the date of the subject incident.

11 13. That Defendant/Third Party Plaintiff Walmart, Inc. did not owe a duty to Plaintiff to  
12 insure the safety of the product supplied by Third Party Defendant Gatekeeper Systems, Inc.

13 14. That Defendant/Third Party Plaintiff Walmart, Inc. contracted with Third Party  
14 Defendant Gatekeeper Systems, Inc. for the supply of shopping carts and maintenance of the shopping  
15 carts(s) located on the premises of Walmart Store # 3350 located at 5198 Boulder Highway, Las  
16 Vegas, NV 89122.

17 15. That pursuant to the master services agreement between Defendant/Third Party  
18 Plaintiff Walmart, Inc. and Third Party Defendant Gatekeeper Systems, Inc., Gatekeeper Systems was  
19 required at its sole cost and expense to indemnify Walmart, Inc. as stated in the master services  
20 agreement:

21 Contractor shall protect, defend, hold harmless and indemnify Walmart, its affiliates,  
22 officers, directors, employees and agents, from and against any and all lawsuits, claims,  
23 demands, actions, liabilities, losses, damages, costs and expenses (including attorneys'  
24 fees and court costs) that may be asserted by any person or any entity, regardless of the  
25 cause or alleged cause thereof, and regardless of whether such matters are groundless,  
26 fraudulent or false, arising out of any actual or alleged: (a) misappropriation or  
27 infringement of any intellectual property or other right relating to the Services or this  
28 Agreement; (b) death of, or injury to, any person, damage to any property, or any other  
damage or loss, by whomsoever suffered, resulting or alleged to result in whole or in

1 part from the Services or this Agreement; (c) violation by Contractor or any of its  
2 employees, representatives or agents of any law relating to the Services or this  
3 Agreement; (d) act, activity, or omission of Contractor or any of its employees,  
4 representatives, or agents, including, but not limited to, activities on Walmart's  
5 premises and Contractor's use of any vehicle, equipment, fixture, or material in  
6 connection with the Services or this Agreement; (e) joint employer situation (i.e.,  
7 where a claim or determination is made against Walmart that any employee, agent,  
8 representative or contractor of Contractor is an employee of Contractor or that Walmart  
9 was his or her employer, including but not limited to a joint employer); and/or (f)  
10 breach of this Agreement or any Scope of Work. This indemnification obligation is not  
11 limited in any way by limitations on the amount or type of damages or compensation  
12 payable to or for Contractor or its agents under workers' compensation acts, disability  
13 benefits acts, other employee benefits acts, or other agreements.

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15 16. That Third Party Defendant Gatekeeper Systems, Inc. had, and continues to have, a  
16 duty as the contracted vendor to fulfill its obligation under the vendor agreement to indemnify  
17 Defendant/Third Party Plaintiff Walmart, Inc.

18 17. That Defendant/Third Party Plaintiff Walmart, Inc. was not negligent and did not  
19 contribute to the injuries alleged by Plaintiff.

20 18. That should judgment be recovered against Defendant/Third Party Plaintiff Walmart,  
21 Inc. or should Walmart, Inc. enter into a settlement with Plaintiff, Third Party Defendant Gatekeeper  
22 Systems, Inc. should pay to Defendant/Third Party Plaintiff Walmart, Inc. its share of the judgment  
23 based upon its proportion of fault in contribution.

24 19. That Defendant/Third Party Plaintiff Walmart, Inc. is entitled to recover from Third  
25 Party Defendant Gatekeeper Systems, Inc. fees and costs incurred in the preparation and prosecution  
26 of this Third Party Complaint.

27  
28 **THIRD CLAIM FOR RELIEF**  
**(EQUITABLE INDEMNITY)**

20. Defendant/Third Party Plaintiff Walmart, Inc. incorporates by reference Paragraphs 1  
through 19 above as if fully set forth herein.

21. That Defendant/Third Party Plaintiff Walmart, Inc. contracted with Third Party

1 Defendant Gatekeeper Systems, Inc. to supply product, and provide maintenance, for the shopping  
2 carts(s) on the premises of Walmart Store # 3350 located at 5198 Boulder Highway, Las Vegas, NV  
3 89122.

4 22. That any negligence, other than the comparative negligence of Plaintiff, was that of  
5 Third Party Gatekeeper Systems, Inc., and not Defendant/Third Party Plaintiff Walmart, Inc.  
6

7 **FOURTH CLAIM FOR RELIEF**  
8 **(CONTRIBUTION)**

9 23. Defendant/Third Party Plaintiff Walmart, Inc incorporates by reference Paragraphs 1  
10 through 22 above as if fully set forth herein.

11 24. That Defendant/Third Party Plaintiff Walmart, Inc. has fulfilled its duty to maintain its  
12 premises in a reasonably safe condition for its client and those upon its premises.

13 25. That Defendant/Third Party Plaintiff Walmart, Inc. contracted to obtain product(s) and  
14 and services from Third Party Defendant Gatekeeper Systems, Inc. in effort to reasonably facilitate the  
15 safety of customers and clients upon its premises.  
16

17 26. That neither Walmart, Inc. nor Gatekeeper Systems, Inc. is responsible for Plaintiff's  
18 alleged injuries and damages, but if Plaintiff recovers for negligent provision of safe and hazard free  
19 premises, Third Party Defendant Gatekeeper Systems, Inc. must indemnify Defendant/Third Party  
20 Plaintiff Walmart, Inc.

21 27. That Defendant/Third Party Plaintiff Walmart, Inc. was not negligent and is not  
22 responsible for the alleged injuries and damages of Plaintiff, if any. However, if as a result of matters  
23 alleged in Plaintiff's Complaint, Walmart, Inc. is required to satisfy more than its share of all or part  
24 of the claims asserted against it by Plaintiff, which liability is specifically denied, then Third Party  
25 Defendant Gatekeeper Systems, Inc. is liable to Walmart, Inc. for its portion in contribution based  
26 upon the negligence, if any, of Gatekeeper Systems, Inc..  
27

28 28. That the proximate cause of Plaintiff's alleged injuries and damages were the actions of



1 Third Party Defendant Gatekeeper Systems, Inc..

2 29. That Walmart, Inc. has found it necessary to retain the services of an attorney to  
3 prosecute this action and is entitled to attorney's fees and costs of suit incurred herein.  
4

5 **PRAYER FOR RELIEF**

6 1. That Third Party Defendant Gatekeeper Systems, Inc. indemnify Defendant/Third Party  
7 Plaintiff Walmart, Inc. pursuant to contract and/or in equity as to any judgment rendered against it on  
8 behalf of Plaintiff and the costs and attorney fees incurred in the defense of this matter;

9 2. That Defendant/Third Party Plaintiff Walmart, Inc. is entitled to indemnification and  
10 defense by and from Third Party Gatekeeper Systems, Inc.;

11 3. That Third Party Defendant Gatekeeper Systems, Inc. contribute to payment of any and  
12 all damages which may be found in this action filed by Plaintiff in accordance with its percentage of  
13 fault;  
14

15 4. That Third Party Defendant Gatekeeper Systems, Inc. pay that percentage of  
16 underlying liability for the alleged damages sustained by Plaintiff corresponding to its extent of  
17 negligence, if any; and

18 5. That Defendant/Third Party Plaintiff Walmart, Inc. is entitled to fees and costs of  
19 defending and prosecuting the third party complaint in the lawsuit;  
20

21 6. For such other further relief as deemed appropriate by the Court.

22 DATED this 12<sup>th</sup> day of June 2019.  
23

24 **PHILLIPS, SPALLAS & ANGSTADT LLC**

25 */s/ Betsy C. Jefferis*

26 BETSY JEFFERIS  
27 Nevada Bar No. 12980  
28 504 South Ninth Street  
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(702) 938-1510

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*Attorneys for Defendant  
Walmart Inc.*

1 **CERTIFICATE OF SERVICE**

2 Pursuant to FRCP Rule 5, I hereby certify that I am an employee of the law firm PHILLIPS,  
3 SPALLAS & ANGSTADT, LLC, and that, on this 12th day of June 2019, I served a copy of  
4 **DEFENDANT WALMART INC.'S THIRD PARTY COMPLAINT AGAINST GATEKEEPER**  
5 **SYSTEMS INC.** as follows:

6 ☒ By placing same to be deposited for mailing in the United States Mail, in a sealed envelope  
7 upon which first class postage was prepaid in Las Vegas, Nevada;

8 ☐ By Hand Delivery (ROC); and/or

9 ☒ By Facsimile Transmission to the number referenced below; and/or

10 ☐ By Electronic Service through CM/ECF to:

11 ATTORNEY OF RECORD	TELEPHONE/FAX	PARTY
12 John B. Greene, Esq. Nevada Bar No. 004279 13 Robert D. Vannah, Esq. Nevada Bar No. 002503 VANNAH & VANNAH 14 400 South Seventh Street, 4 <sup>th</sup> Floor Las Vegas, NV 89101	Phone 702-369-4161 Fax 702-369-0104	Plaintiff

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An Employee of PHILLIPS, SPALLAS & ANGSTADT LLC  
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